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72-495

No. _____

SUPREME COURT, U.S.
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In the Supreme Court of the United States

72-495

UNITED STATES,

v.

JOHN PERCY STIGLETS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ~~AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA BATON ROUGE DIVISION~~

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No. _____

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

v.

JOHN PERCY STIGLETS,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA BATON ROUGE DIVISION

May it Please the Court:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, rendered on the 28th day of June, 1972, in United States of America versus John P. Stiglets, Number 72-1170 on the Docket of said court, and the refusal of petitioner's application for rehearing entered on the 25th day of July, 1972, affirming the decision of the United States District Court for the Eastern District of Louisiana, Baton

Rouge Division, Criminal Number 71-24 on the Docket of said court. The decision of the United States Court of Appeals for the Fifth Circuit is appended hereto. A stay of mandate has been granted pending decision on this application for writ of certiorari to this Honorable Court.

JURISDICTION

Jurisdiction of this court is invoked under 28 USC 1254(1) and 28USC 1651(a). Petitioner is requesting a review of a decision of the United States Court of Appeals for the Fifth Circuit.

QUESTIONS PRESENTED

I. Should an appeals court place a criminal appeal on the summary calendar when the due process question raised is improper instruction to the jury by the trial court as to the law to be used by the jury while deliberating?

II. Should an appeals court decide the issue of whether acquittal on two counts of a three count indictment involving one transaction and virtually identical facts dictate acquittal on all counts of the indictment?

III. Were the acts performed by the defendant of such a nature that they violated the intent and spirit of 18 USC 474?

STATUTORY PROVISIONS INVOLVED

This case involves the statutory provision 18 USC 474.

STATEMENT OF THE CASE

On March 9, 1971, petitioner, along with John Sims, was indicted in a three (3) count indictment.

The indictment charged in the first count that they did, with intent to defraud, make nine thousand, four hundred twenty-two (9,422) counterfeit federal reserve notes, in violation of 18 USC 471.

The second count charged that they were in possession of counterfeiting paraphernalia with intent to use this for printing counterfeit money in violation of 18 USC 474.

The third count charged them with having in their possession, with intent to defraud, the counterfeit notes described above, in violation of 18 USC 472.

On September 20, 1971, the two day trial for both defendants began. On September 21, 1971, the jury returned a verdict of "Not Guilty" on all counts as to John Sims, and "Not Guilty" on counts One (1) and Three (3) as to petitioner, John P. Stiglets.

On January 7, 1972, the court sentenced petitioner to the custody of the United States Attorney General for a period of six (6) years. It is this conviction and sentence that John P. Stiglets respectfully requests be reviewed by this Honorable Court.

ARGUMENT

I. AN APPEALS COURT SHOULD NOT PLACE A CRIMINAL APPEAL ON THE SUMMARY CALENDAR WHEN THE DUE PROCESS QUESTION RAISED IS

IMPROPER INSTRUCTION TO THE JURY BY THE TRIAL COURT AS TO THE LAW TO BE USED BY THE JURY WHILE DELIBERATING.

This case was disposed of by the United States Court of Appeals for the Fifth Circuit, on the briefs submitted without oral argument pursuant to local rule 18. The avowed purpose of this procedure is to shorten the time between conviction and final disposition in criminal cases.

Presently one-half (½) of the direct criminal appeals to the Fifth Circuit are being disposed of in this manner. *Isbell Enterprises, Inc. v. Citizens Casualty Co. of N.Y.*, 431 F. 2d 409 (1970).

Petitioner does not deny that the purpose of this rule is in the public interest, but merely points out that situations, as in this case, do arise where the rule may be used to deny a criminal defendant his right to appeal.

Herein the main point on appeal is that the trial court improperly instructed the jury on the issue of criminal intent of the petitioner to violate 18 USC 474. The transcript of the trial proceedings at Pages 290-325 shows that the jury was instructed three (3) different times on "intent" during six (6) hours of deliberation. The jury acquitted John Sims on all three counts and petitioner on counts One (1) and Three (3) of the indictment.

The question of intent is paramount in this case. Petitioner admitted he was guilty of the overt acts

with which he was charged, but gave a good and valid reason for his conduct. He related to the jury the threats he had received of bodily harm to himself and to his family. It was the threats of harm that caused him to commit these illegal acts. He did not commit them wilfully or with the intent requisite for guilt of a crime.

At Page 316 of the trial transcript, the trial court charged the jury that counts One (1) and Three (3) required intent to defraud and count Two (2) merely required intent to make counterfeit money and nothing at all was mentioned of criminal intent which is a necessary element of the crime. At the very least, the instructions were confusing and misleading. This is plain error, objected to by counsel, and requires reversal. *Mann v. U. S.*, 319 F. 2d 404 (1963). 18 USC 474(4).

Certainly the public interest in seeing a criminal defendant afforded all of his due process rights, including the right of having the trial court correctly instruct the jury as to the law, outweighs any public interest supposedly afforded by local rule eighteen (18) of the appellate court. Counsel should be allowed to orally argue the impact of this error in its relationship to the jury's confusion during deliberation.

II. AN APPEALS COURT SHOULD DECIDE THE ISSUE OF WHETHER ACQUITTAL ON TWO (2) COUNTS OF A THREE (3) COUNT INDICTMENT INVOLVING ONE TRANSACTION AND VIRTUALLY IDENTICAL FACTS DICTATE ACQUIT-

TAL ON ALL COUNTS OF THE INDICTMENT.

The question is directly related to the problem the trial court and jury had with "intent" as discussed above.

In answer to this question, the appellate court merely sidestepped the issue and stated that the "jury's verdict was logically inconsistent."

Here again the question of "intent" should have been dealt with but was not. The court relies on *United States v. Lloyd*, 425 F. 2d 711 (1970). When, based on the facts, one cannot avoid the conclusion that if petitioner was guilty on one count, he should have been guilty on all three. Since the jury found him not guilty of two (2) counts, it should have found him not guilty on all three. Based on *Lloyd* and *United States v. Rice*, 428 F. 2d 923 (1970), and other cases relating to the propriety of inconsistent verdicts, the argument of petitioner at first blush appears devoid of logic.

However, the defense of coercion asserted by petitioner at the trial immediately lends substance to the argument that in this case consistency in the verdicts is necessary to support the verdict. Couple this with the fact that the trial court incorrectly instructed the jury as to "intent" on the only count on which petitioner was convicted and it becomes crystal clear that an acquittal on all charges is mandatory.

The simple facts are that petitioner took the stand and admitted he committed the overt act charged in each count of the indictment. In defense of his conduct,

petitioner told the jury that his acts were the results of threats on his life and the lives of members of his immediate family. Obviously the jury believed petitioner in that they acquitted him on two (2) of three (3) counts of the indictment; all of which involved the same transaction and virtually identical facts.

The jury could have reached this conclusion for no reason other than the fact that the trial court instructed them that mere possession of counterfeiting plates was a crime regardless of the intent of or reason for the possession. *Michener v. United States*, 157 F. 2d 616 (1947).

III. THE ACTS PERFORMED BY THE DEFENDANT WERE NOT OF SUCH A NATURE THAT THEY VIOLATED THE INTENT AND SPIRIT OF 18 USC 474.

The purpose of this law is to prohibit the making or possession of plates or stones that could be used in the counterfeiting of the currency of the United States. The law intends to punish those who voluntarily or willingly violate its prohibitions.

Certainly the law was not enacted to punish persons such as petitioner who are coerced or forced to violate the law. For this reason, it is obvious that one must have a reckless disregard of the law or intend to violate the law to commit a crime.

In the companion law, 18 USC 472, the law is clear that proof of criminal intent is indispensable to proof of the offense of unlawful possession of the counterfeit money. This rule has been adopted in *Holt v. U. S.*, 404

F. 2d 914 (1968), *U. S. v. King*, 326 F. 2d 415 (1964), *U. S. v. Brown*, 348 F 2d 661 (1965), *U S. v. Meisch*, 370 F. 2d 768 (1966), and *U. S. Seay*, 432 F. 2d 395 (1970).

In *U. S. v. Lester*, 363 F. 2d 68 (1966) and *King v. U. S.*, 364 F. 2d 235 (1966), the hornbook rule that criminal intent is a necessary element of every crime is again restated.

In *Baender* v. *Barnett*, 41 S. Ct. 271 (1921), the defendant bought some junk and therein were counterfeiting dies. The rule of law developed in that counterfeiting case is the rule that this petitioner relies upon to show that the trial court incorrectly instructed the jury relative to the requisite intent necessary for a guilty verdict.

In *Baender*, the court said,

> "The statute is not intended to include and make criminal a possession which is not conscious and willing. While its words are general, they are to be taken in a reasonable sense, and not in one which works manifest injustice or infringes constitutional safeguards."

The only other case on point with the case at hand is *Michner v. U. S.*, 170 F. 2d 973 (1949). This case appears to be the benchmark case concerning intent of possession under 18 USC 474. Here the court, in interpreting the statute, held that mere possession of a plate similar to a plate from which genuine federal notes are printed is not a crime; the possession must be with intent to use the plate in counterfeiting.

In the case at hand, petitioner did not intentionally violate the law. He knew what he was doing was violative of the law. He explained, however, that he was forced to engage in these activities because of threats of immediate harm to himself and his family.

CONCLUSION

In conclusion, it is respectfully requested that a Writ of Certiorari be granted and after due consideration, a judgment of acquittal be entered or, in the alternative, petitioner's conviction be reversed and a new trial granted.

Respectfully submitted,

WEBER & WEBER

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CERTIFICATE

I hereby certify that copies of the above and foregoing petition has this day been served on the following by depositing same in the United States mail, postage prepaid:

Gerald J. Gallinghouse
United States Attorney
500 St. Louis Street
New Orleans, Louisiana 70130

John Lee Smith
Special Attorney
Department of Justice
500 St. Louis Street
New Orleans, Louisiana 70130

Baton Rouge, Louisiana, this 21st day of September, 1972.

Emile M. Weber

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 72-1170

Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOHN P. STIGLETS,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

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(June 28, 1972)

Before BROWN, Chief Judge, GOLDBERG and MORGAN, Circuit Judges

PER CURIAM: John Percy Stiglets was charged in a three-count indictment with (i) counterfeiting 9,422 Federal Reserve notes with intent to defraud in

*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F. 2d 409, Part I.

violation of 18 U.S.C.A. § 471, (ii) possessing offset printing plates with intent to use such plates for counterfeiting in violation of 18 U.S.C.A. § 474, and (iii) possessing the counterfeit notes with intent to defraud in violation of 18 U.S.C.A. § 472. Following trial by jury in the District Court, the defendant was acquitted on counts (i) and (iii), convicted on count (ii), and sentenced to the custody of the Attorney General for a term of six years. We affirm.

The record reveals that the defendant testified in his own behalf and admitted every element of each offense other than criminal intend. His defense was based exclusively on the contention that he had printed the bills as a result of threats directed against himself, his business and members of his family.

Primarily the appellant argues that the Trial Judge incorrectly instructed the jury on the issue of intent. All of the several variations orchestrated on this theme are without merit. The Court's charge contained an explicit instruction to the effect that intent to use the plates for counterfeiting was a necessary element of the offense, and there was likewise a concise explanation of the relevance of that issue to the defense of coercion. Unlike *Mann v. United States*, 5 Cir., 1963, 319 F. 2d 404, this is not a case in which the instructions were confusing, misleading, or incorrect as a matter of law. The assertion that the jury was told that mere possession was sufficient for a conviction is flatly refuted by the record.

Because each of the counts involved one transaction and virtually identical facts, the appellant argues

that an acquittal on two counts automatically dictated acquittal on all counts. Without deciding the point, we may assume that the jury's verdict was logically inconsistent. However, "inconsistency between verdicts on different counts of the indictment does not vitiate convictions on those counts of which defendant is found guilty. Each count is separately considered and if supported by the evidence may stand." *United States v. Lloyd*, 5 Cir., 1970 425 F. 2d 711, 713.

By *United States v. Coley*, 5 Cir., 1971, 441 F. 2d 1299, 1301 we have already rejected the appellant's theory that the failure to hold a preliminary hearing amounted to a denial of due process of law. The Government's failure to introduce the printing plates into evidence, if it was error at all, was clearly harmless error under F. R. Cr. P. 52, particularly in light of the defendant's unequivocal admission that he possessed the plates and that they were spurious. Likewise, the attack on the District Court's action with respect to the defendant's motions for discovery and inspection must fail in the absence of any showing whatever that such action constituted an abuse of discretion or resulted in prejudice to substantial rights of the accused. *United States v. Saitta*, 5 Cir., 1971, 443 F. 2d 830. As for the denial of the motion to suppress, we are persuaded that the record clearly and conclusively establishes the legality of the search and the seizure that accompanied it.

Finally, the appellant claims that his motion for a judgment of acquittal should have been granted. Inasmuch as the proof of guilt with respect to the second

count of the indictment was sufficient to support an inference of guilt beyond a reasonable doubt, that claim is without merit. *United States v. Warner*, 5 Cir., 1971, 441 F. 2d 821, 825, cert. denies, _____ U.S. _____, _____ S. Ct._____, 30 L. Ed 2d 58.

AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. S72-1170

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JOHN P. STIGLETS,

Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of Louisiana

(July 25, 1972)

ON PETITION FOR REHEARING
Before BROWN, Chief Judge, GOLDBERG and MORGAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1971

No. 72-1170
Summary Calendar

D. C. Docket No. CR 71-24

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

JOHN P. STIGLETS,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

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Before BROWN, Chief Judge, GOLDBERG and MORGAN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

June 28, 1972

Issued as Mandate: Aug. 2, 1972

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-495

JOHN PERCY STIGLETS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Louisiana, petitioner was convicted on Count Two of a three-count indictment, which charged him with possession of plates and other items with intent to use them to counterfeit obligations of the United States, in violation of 18 U.S.C. 474 (Pet. App. 11-12). He was acquitted on the two other counts, which charged him

with counterfeiting and possessing 9,422 $20 Federal Reserve notes with intent to defraud, in violation of 18 U.S.C. 471 and 472 (Pet. App. 11-12).[1] The district court sentenced him to six years' imprisonment, subject to the parole eligibility provisions of 18 U.S.C. 4208(a)(2) (Tr. 333-334). The court of appeals affirmed (Pet. App. 11-14).

1. In December 1969, petitioner, the proprietor of a Baton Rouge print shop, discussed with John Sistrunk the possibility of their counterfeiting money. To demonstrate the counterfeiting process to Sistrunk, petitioner made a printing plate from a $20 bank note and printed two or three hundred impressions as samples. However, petitioner decided that this would be too difficult and the two started counterfeiting money orders instead (Tr. 113-117, 215-217).

In June 1970, after petitioner showed Tom Ray some counterfeit $20 bills he had made, they decided to go into the counterfeiting business together (Tr. 61-63). Between then and February 1971 petitioner printed and Ray sold counterfeit $20 and $100 bills with a face value of approximately one million dollars (Tr. 63-72, 245). On February 24, 1971, petitioner was arrested in his shop in the act of printing $20 counterfeit bills; uncut reams containing 9,422 individual bills were in his press and stacked near a paper cutter (Tr. 7-15, 301). The plates and other paraphernalia from which the bills had been made were also on the premises (Tr. 12).

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[1] A codefendant, John Sims, Jr., was acquitted on all counts (Tr. 326). "Tr." refers to the trial transcript, a copy of which is being lodged with the Clerk of this Court.

Testifying on his own behalf, petitioner admitted printing the counterfeit bills (Tr. 245) and, through counsel, admitted every element of each of the charged offenses except that of criminal intent (Tr. 12-15). His defense was that he had engaged in the counterfeiting operation with Ray because he feared for his own and his family's safety; his fear allegedly stemmed from a threat he said he had received from a man to whom Ray had introduced him (Tr. 217-228).[2] Petitioner admitted that in December 1969, six months before the alleged threat and the commencement of his association with Ray, he had engaged in the counterfeiting activities with Sistrunk described above, but said that those acts had been done as a joke (Tr. 215-217).

2. The court instructed the jury that to convict on Count One (the counterfeiting charge) or Count Three (possession of the counterfeit notes) it had to find that petitioner had acted with intent to defraud, but that to convict on Count Two (possession of the plates) it would be sufficient to find that he intended to use the plates to counterfeit obligations of the United States (Tr. 303-305, 316, 322). In addition, in an instruction relating to the charged offenses generally, in which petitioner's theory of defense was presented, the court charged that in order to convict the jury had to find that petitioner's allegedly

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[2] Petitioner testified that Ray had told him that he too was motivated by fear as a result of threats by the same man (Tr. 220-226). Ray denied that he had ever so advised petitioner and said that both he and petitioner had acted voluntarily in everything they did (Tr. 77-78, 103, 107-108).

unlawful acts had been voluntary, that is, not coerced or compelled, and that the jury should acquit if it found that petitioner acted out of fear that death or serious bodily injury would befall him or his family if he refused to engage in counterfeiting (Tr. 308, 315-316). Petitioner did not object to this instruction (Tr. 313-314).

3. Petitioner contends that the court erred in declining to instruct the jury that to convict on Count Two it had to find he had the intent to defraud (Pet. 4-5). But 18 U.S.C. 474 (4th paragraph), the statute on which Count Two is based, does not require proof of intent to defraud.[3] It prohibits possession of a counterfeiting plate with intent to use it to counterfeit an obligation of the United States and the district court so instructed the jury, as the court of appeals pointed out (Pet. App. 12).[4] It is immaterial that 18 U.S.C. 471 and 472, the com-

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[3] 18 U.S.C. 474 (4th paragraph), provides, in relevant part, that:

> Whoever has in his * * * possession any plate * * * or other thing * * * with intent to use such plate * * * or other thing * * * in * * * counterfeiting any such obligation or other security * * * [of the United States] * * * [shall be punished as indicated].

[4] In view of this instruction, petitioner's assertion that the jury was told that mere possession of the plates was a crime regardless of the intent of or reason for the possession (Pet. 7) is incorrect, as the court below observed (Pet. App. 12). Indeed, petitioner himself states in the petition that the trial court required the jury to find, in order to convict on Count Two, that he intended to make counterfeit money (Pet. 5).

panion statutes on which the other counts were based, do require proof of intent to defraud. In phrasing Section 474 as it did, Congress evidently decided that possession of a plate with the likeness of a United States bank note, with intent to use the plate to counterfeit the note, is a serious enough threat to the integrity of the money system to warrant its prohibition without more. Cf. *Baender* v. *Barnett*, 255 U.S. 224, 225.

4. Petitioner also contends that his conviction on Count Two cannot stand because the jury inconsistently acquitted him on the other counts (Pet. 5-7). We assume, *arguendo*, as did the court of appeals (Pet. App. 13), that the jury's verdicts are logically inconsistent. Where, however, a conviction on one count is supported by the evidence and is otherwise valid, the fact that an inconsistent verdict was rendered on another count or counts does not impair the validity of the conviction since each count "is regarded as if it was a separate indictment." *Dunn* v. *United States*, 284 U.S. 390, 393-394; *United States* v. *Fox*, 433 F. 2d 1235, 1238 (C.A. D.C.); *United States* v. *Lloyd*, 425 F. 2d 711, 712-713 (C.A. 5); *United States* v. *Carbone*, 378 F. 2d 420 (C.A. 2), certiorari denied, 389 U.S. 914; cf. *United States* v. *Dotterweich*, 320 U.S. 277, 279. The evidence plainly supports the Count-Two conviction. In any event, the statutes under which petitioner was acquitted involve an element of intent to defraud not necessary to the offense on which the guilty verdict was

returned. Thus, this is not a case in which the jury's verdict must be regarded as internally inconsistent.[5]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

HENRY E. PETERSEN,
Assistant Attorney General.

PHILIP R. MONAHAN,
Attorney.

NOVEMBER 1972.

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[5] Petitioner suggests that this was an inappropriate case for the court of appeals to have decided on its summary calendar (*i.e.*, without oral argument), pursuant to its local Rule 18 (cf. *Isbell Enterprises, Inc.* v. *Citizens Casualty Co. of New York*, 431 F. 2d 409 (C.A. 5)), because the alleged error involved the instructions and because counsel, assertedly, could adequately argue its impact only through oral presentation (Pet. 3-5). Consideration of the claimed error, however, required no more than examination of the pertinent pages of the transcript, and the court below acted within its discretion in treating the appeal as it did. Cf. Rule 34(b), Fed. R. App. P.

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